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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

10 UNITED STATES OF AMERICA, CASE NO. 5:09-cr-00980 EJD

CASE NO. 5:09-cr-00980 EJD

11 Plaintiff(s),
12 v

ORDER DENYING DEFENDANT'S MOTION TO TERMINATE OR MODIFY SUPERVISED RELEASE

13 | MICHAEL BAUER,

[Docket Item No(s). 3]

15 Defendant(s). /

16 On April 8, 2003, Defendant Michael Bauer (“Defendant”) was convicted by a jury of
17 conspiracy to distribute and possession with intent to distribute methamphetamine in violation of 21
18 U.S.C. §§ 846 and 841(a)(1). See Judgment, Docket Item No. 2. Judge Myron H. Thompson of the
19 United States District Court for the Middle District of Alabama then sentenced Defendant to a term
20 of imprisonment of 85 months followed by a 5-year term of supervised release. See *id.*

21 Defendant was released from custody on August 4, 2008, and thereafter began serving the
22 imposed term of supervised release. See Mot. to Terminate or Modify Supervised Release
23 (“Motion”), Docket Item No. 3. On October 8, 2009, responsibility for Defendant’s supervision was
24 transferred from Alabama to the Northern District of California. As a condition of supervised
25 release, Defendant is prohibited from leaving the judicial district without the permission of the court
26 or probation officer. See id.

27 Defendant is scheduled to be released from supervision on August 3, 2013. After serving
28 approximately three and one-half years of the five-year term, Defendant now moves for an order

1 terminating supervised release pursuant to 18 U.S.C. § 3583(e)(1). The Government has filed a
2 response to Defendant's motion and the Probation Office has provided a recommendation to the
3 court. Having considered all relevant submissions and documents, the court finds this matter
4 suitable for decision without a hearing. For the reasons stated below, Defendant's motion will be
5 denied.

6 **I. DISCUSSION**

7 18 U.S.C. § 3583(e)(1) provides, in pertinent part:

8 The court may, after considering the factors set forth in section 3553
9 (a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7) --

10 (1) terminate a term of supervised release and discharge the defendant
11 released at any time after the expiration of one year of supervised
12 release, pursuant to the provisions of the Federal Rules of Criminal
Procedure relating to the modification of probation, if it is satisfied
that such action is warranted by the conduct of the defendant released
and the interest of justice

13 “[T]he plain language of the statute indicates that the district courts have broad discretion to
14 alter the conditions of a defendant's supervised release.” United States v. Miller, 205 F.3d 1098,
15 1100 (9th Cir. 2000). “Occasionally, changed circumstances - for instance, *exceptionally* good
16 behavior by the defendant or a downward turn in the defendant's ability to pay a fine or restitution
17 imposed as conditions of release - will render a previously imposed term or condition of release
18 either too harsh or inappropriately tailored to serve the general punishment goals of section
19 3553(a).” United States v. Lussier, 104 F.3d 32, 36 (2nd Cir. 1997) (emphasis added). The
20 modification or termination mechanism provided by § 3583(e)(1) allows the court “to respond to
21 changes in the defendant's circumstances that may render a previously imposed condition of release
22 either too harsh or inappropriately tailored to serve the general punishment goals of § 3553(a).”
23 United States v. Gross, 307 F.3d 1043, 1044 (9th Cir. 2002).

24 Here, Defendant argues that termination of supervised release is appropriate for two main
25 reasons. First, Defendant contends he has complied with all terms of his supervised release and has
26 “successfully adjusted to reentry into society” by securing employment, completing several
27 rehabilitation programs, and becoming involved with his family. Second, Defendant believes that
28 the condition restricting travel hinders his ability to work.

1 The Government opposes Defendant's request. As to Defendant's claim of compliance with
2 release conditions and reentry into society, the Government argues that these circumstances, while
3 commendable, do not themselves constitute the type of changed circumstances or "exceptionally
4 good behavior" contemplated by Lussier and its progeny. See Lussier, 104 F.3d at 36; see also
5 Folks v. United States, 733 F. Supp. 2d 649, 651 (W.D.N.C. 2010) ("[E]ven '[m]odel prison conduct
6 and full compliance with the terms of supervised release is what is expected of a person under the
7 magnifying glass of supervised release and does not warrant early termination.'"); see also United
8 States v. McKay, 352 F. Supp. 2d 359, 361 (E.D.N.Y. 2005) (finding that defendant's resumption of
9 his "pre-incarceration life," including the restoration of family participation, "are expected of a
10 person on supervised release and do not constitute the 'exceptional behavior'" contemplated by §
11 3583(e)(1)); see also United States v. Grossi, No. 04-40127 DLJ, 2011 U.S. Dist. LEXIS 22831, at
12 *5-6, 2011 WL 704364 (N.D. Cal. Feb. 11, 2011) ("Mere compliance with the terms of supervised
13 release is what is expected, and without more, is insufficient to justify early termination."). In
14 response to Defendant's issue with the travel condition, the Government points out that Defendant
15 has not established that termination of the restriction is necessary to alleviate a particular hardship.
16 Moreover, the Government believes this issue is better handled by the probation officer in the first
17 instance.

18 For its part, the Probation Office does not recommend early termination of supervised release
19 for Defendant. Although the Probation Office concurs that Defendant has been compliant, his
20 conduct has not been described as exceptional.

21 After considering all the statutory factors, the court concurs with the Government and the
22 Probation Office that Defendant has not demonstrated the type of circumstances justifying a
23 modification or termination of his supervised release. While the court does not wish to minimize
24 Defendant's laudable post-incarceration accomplishments, it is nonetheless apparent that the reasons
25 cited by Defendant - compliance with release conditions, resumption of employment and
26 engagement of family life - are expected milestones rather than a change of circumstances rendering
27 continued supervision no longer appropriate. See McKay, 352 F. Supp. 2d at 361; see also United
28 States v. Weintraub, 371 F. Supp. 2d 164, 167 (Dist. Conn. 2005) ("Although Weintraub's ongoing

1 and full compliance with all conditions of supervised release, including payment of the fine and
2 restitution, is commendable, in the end that is what is required of all criminal defendants and is not a
3 basis for early termination of his supervised release.”). Indeed, Defendant may receive additional
4 benefit from the balance of the release term.

5 Nor has Defendant demonstrated that the travel restriction is unduly burdensome such that it
6 should be modified or terminated. Although Defendant generally indicates it “can take from two
7 weeks to a month” to obtain permission to travel outside the district, he has not cited a specific
8 instance for which the travel restriction limited his ability to perform his job duties. See United
9 States v. Rasco, No. 88 Cr. 817 (CSH), 2000 U.S. Dist. LEXIS 497, at *6-7, 2000 WL 45438
10 (S.D.N.Y Jan. 19, 2000). Moreover, the court is aware that travel requests, especially those relating
11 to employment, can be expedited and accommodated through the Probation Office. It is therefore
12 recommended that Defendant consult his assigned probation officer if the travel restriction has truly
13 become an obstacle.

14 Ultimately, the seriousness of Defendant’s crimes of conviction coupled with his particular
15 history support maintenance of the full 5-year term. The sentence imposed was and remains suitably
16 tailored to the offensive conduct.

17 **II. ORDER**

18 Based on the foregoing, Defendant’s motion to terminate or modify supervised release is
19 DENIED.

21 **IT IS SO ORDERED.**

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23 Dated: April 13, 2012
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EDWARD J. DAVILA
United States District Judge